3355.

SUPREME COURT OF THE UNITED STATES.

No. 110.

MATTHEW WATSON, PLAINTIFF IN ERROR,

vs.

COLIN S. TARPLEY.

IN ERROR TO THE CIRCUIT COURT UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

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3355

MATHEW WATSON
vs.
COLIN S. TARPLEY.

Pleas before the honorable Samuel J. Gholson, district judge of the United States, at a circuit court of the United States in and for the ninth circuit and southern district of Mississippi, held at the town of Jackson in said district, on the second Monday of January, in the year of our Lord one thousand eight hundred and fifty-five, which said second Monday of January was the day to which said court was adjourned by order of said court, made on the first Monday of November, in the year of our Lord one thousand eight hundred and fifty-four.

Be it remembered, that heretofore, to wit, on the twenty-ninth day of April, in the year of our Lord one thousand eight hundred and fifty-one, the following writ of summons ad respondendum issued out of the clerk's office of the court aforesaid, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Southern district of Mississippi.

The President of the United States, to the Marshal of the southern district of Mississippi, greeting:

We command you, without delay, to summon Collin S. Tarpley, a citizen of the State of Mississippi, that he be and appear at a circuit court of the United States, to be held at the city of Jackson, in and for the southern district of Mississippi, on the first Monday of May next, to answer to Mathew Watson, president of the Planters' Bank of the State of Tennessee, a citizen of the State of Tennessee, of a plea of trespass on the case, to his damage six thousand dollars, and that he do file his plea or defence with the clerk of said court on or before the meeting of the same, or judgment will be given against him by default; and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, the 29th day of April, A. D. [L. S.] 1851, and in the 75th year of the independence of the United States of America.

W. H. BROWN, *Clerk*.

Marshal's Deputation.

I nominate and appoint Washington Fletcher my special deputy to execute and return this process.

Given under my hand and seal this 29th April, 1851.

FIELDING DAVIS, [SEAL.]
Marshal sou. dist. Miss.

[REC. CX, D. T., 1855.]—1

Marshal's Return.

Executed 29th day of April, 1851.

FIELDING DAVIS, *Marshal.*
By WASHINGTON FLETCHER,
Special Deputy.

And on the same day of suing out the writ aforesaid, the plaintiff, by his attorney, filed his declaration herein, in the words and figures following, to wit:

In the Circuit Court of the United States for the southern district of the State of Mississippi.

Declaration in assumpsit, to May term, 1851.

Mathew Watson, President of the Planters' Bank of the State of Tennessee, an institution incorporated by the legislature of that State, complains of Colin S. Tarpley, a citizen of the State of Mississippi, in custody, &c., of a plea of trespass on the case upon promises.

For that, whereas, the said Colin S. Tarpley, by the signature of C. S. Tarpley, on the fourth day of April, in the year eighteen hundred and fifty, at the city of Jackson, in the State of Mississippi, to wit, at the southern district of said State, drew a certain bill of exchange, in writing, the date whereof is on the day and year aforesaid, and then and there directed the said bill of exchange to McKee, Bulkley and Company, of the city of New Orleans, in the State of Louisiana, and thereby then and there requested said firm, under the name and firm-title of McKee, Bulkley & Co., to pay to the order of James Bankhead, agent, twelve months after date of this first of exchange, second of same tenor and date unpaid, twenty-three hundred and twenty-seven dollars and forty-nine cents, for value received; and then and there delivered the said bill of exchange to the payee, said James Bankhead, who then and there delivered said bill of exchange to Mathew Watson, pres't, (meaning president,) as above stated, who is the plaintiff above named.

And the said plaintiff further avers, that when the said bill of exchange was presented for acceptance to said firm, to wit, on the twenty-seventh day of April, in the year eighteen hundred and fifty, at the office of said firm, in New Orleans, in the State of Louisiana, to wit, at the district aforesaid, through one of its partners, the said firm of McKee, Bulkley & Co., to whom it was then presented and shown for acceptance, answered that the same could not be accepted, and the said partners, nor the said firm, nor any other person, did not then, or at any time since, accept the same; of all which said several premises the said defendant had due notice, on the day and year last aforesaid, at the city of Jackson, in the State of Mississippi, at the southern district aforesaid.

And the said plaintiff further avers, the said bill of exchange, made and drawn as aforesaid, was presented when said bill became due and payable according to the tenor and effect thereof, at the office of said

firm of McKee, Bulkley & Company, in the city of New Orleans, in the State of Louisiana, to wit, at the southern district aforesaid, to wit, on the seventh day of April, in the year eighteen hundred and fifty-one; said bill was then and there presented for payment to one of the partners of said firm, and shown to him, and payment of the said sum of money therein specified was then and there duly required and demanded, according to the tenor and effect of the said bill of exchange; but that neither the said partner, nor the said firm of McKee, Bulkley & Co., nor any other person for his or their account, did or would at that or any other time, either before or since, pay the said sum of money in the said bill of exchange specified, or any part thereof, to the said plaintiff; but the answer was that the same could not be paid; of all which said several premises the said defendant, Colin S. Tarpley, on the day and year last aforesaid, at the city of Jackson, in the State of Mississippi, to wit, at the district aforesaid, had due notice. By means whereof, the said defendant became liable then and there to pay to the said plaintiff the said sum of money in the said bill of exchange specified, when he, the said defendant, should be thereunto afterwards requested; and being so liable, the said defendant, in consideration thereof, on the day and year last aforesaid, at the city of Jackson, in the State of Mississippi, at the district aforesaid, to wit, on the day and year last aforesaid, undertook, and then and there faithfully promised the said plaintiff to pay him the said sum of money in the said bill of exchange specified, when the said defendant should be thereunto requested.

And whereas, also, the said defendant afterwards, to wit, on the seventh day of April, in the year 1850, at the district aforesaid, was indebted to the said plaintiff in the further sum of three thousand dollars lawful money, for so much money before that time lent and advanced by the said plaintiff to the said defendant, at the special instance and request of said defendant, and for other money by the said plaintiff before that time paid, laid out, lent and expended for the said defendant, and at the like request of the said defendant, and for other money by the said defendant had and received to and for the use of said plaintiff; and being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at the southern district of the State of Mississippi aforesaid, faithfully then and there undertook and promised the said plaintiff well and truly to pay unto the said plaintiff the said several sums of money in this count mentioned, when the said defendant shall be thereunto afterwards requested; nevertheless, the said defendant, although often requested, has not paid the said several sums of money above mentioned, or any or either of them, or any part thereof to the said plaintiff, but hath hitherto refused, and still does refuse, to the damage of said plaintiff to the amount of six thousand dollars, and therefore plaintiff brings suit, &c.

J. M. DUFFIELD,
Atty. for plaintiff.

And afterwards, to wit, on the third day of December, A. D. 1851, the following motion was entered in said cause, to wit:

The plaintiff moves the court for leave to file an amended declaration.

A. BURWELL, *for motion.*

TARPLEY, *Contra.*

And afterwards, to wit, at the May term, A. D. 1852, of said court, the following order was entered in said cause, to wit:

Motion to file amended declaration sustained, and cause continued.

Amended Declaration.

THE UNITED STATES OF AMERICA,
Southern district of Mississippi.

In the Circuit Court to May term, A. D. 1851.

Mathew Watson, a citizen of the State of Tennessee, complains of Colin S. Tarpley, a citizen of the State of Mississippi, in the southern district thereof, who was summoned, &c., of a plea of trespass on the case on promises, for that, whereas the said defendant, heretofore, to wit, on the fourth day of April, A. D. 1850, at Jackson, Mississippi, to wit, in said district, by the name and signature of C. S. Tarpley, made his certain bill of exchange in writing of that date, and then and directed said bill to certain persons, under the style and addition of "Messrs. McKee, Bulkley & Co., New Orleans, La.," meaning thereby the mercantile firm of McKee, Bulkley & Company, in New Orleans, in the State of Louisiana; by which said bill, he the said defendant then and there requested the said McKee, Bulkley & Co., twelve months after date thereof, to pay to the order of James Bankhead, agent, the sum of twenty-three hundred and twenty-seven $\frac{49}{100}$ dollars for value received, and then and there delivered the said bill of exchange to said James Bankhead, and the said James Bankhead, by the name of "James Bankhead, ag't," then and there endorsed the said bill of exchange, and delivered the same so endorsed to the said plaintiff, and thereby then and there ordered and appointed the said sum of money to be paid to said plaintiff; and the said plaintiff avers, that afterwards, to wit, on the 27th day of April, A. D. 1850, at New Orleans, Louisiana, to wit, at the district aforesaid, the said bill of exchange was presented and shown to the said McKee, Bulkley & Co., the drawers for acceptance thereof, and they were then and there required to accept the same, but that the said McKee, Bulkley & Co., did not nor would, at the said time when the said bill of exchange was so presented and shown to them for their acceptance thereof as aforesaid, or at any time afterwards, accept the same, or pay the said sum of money therein specified or any part thereof, but wholly neglected and refused so to do; thereupon the said bill of exchange, afterwards, to wit, on the day and year last aforesaid, at New Orleans, Louisiana aforesaid, to wit, at the district aforesaid, was duly protested for non-acceptance thereof; of all which said several premises the said defendant afterwards, to wit,

on the day and year last aforesaid, at, to wit, the district aforesaid, had notice, by means whereof the said defendant became liable to pay to the said plaintiff the said sum of money in the said bill of exchange specified when thereto requested, and being so liable, the said defendant, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at, to wit, the district aforesaid, undertook, and then and there promised the said plaintiff to pay to him the said sum of money in the said bill specified when thereto afterwards requested.

And for that, whereas, also, the said defendant, by the name of C. S. Tarpley, heretofore, to wit, on the 4th day of April, A. D. 1850, at Jackson, Mississippi, to wit, in said district, made his certain bill of exchange in writing, having date the day and year aforesaid, and directed the same to certain persons in New Orleans, in the State of Louisiana, (by the name and description of "Messrs. McKee, Bulkley & Co., New Orleans, La.,") by which said bill of exchange said defendant then and there requested said McKee, Bulkley & Co., twelve months after date of that first exchange, second of same tenor and date unpaid, to pay to the order of James Bankhead, agent, twenty-three hundred and twenty-seven $\frac{49}{100}$ dollars, value received; and then and there delivered said bill of exchange to said James Bankhead, who then and there, by the name of "James Bankhead, ag't," endorsed the said bill of exchange and delivered the same to said plaintiff, and thereby then and there ordered and directed the said sum of money to be paid to said plaintiff; of all which the said defendant then and there had notice.

And the said plaintiff in fact says, that afterwards, when the said bill of exchange became due and payable, according to the tenor and effect thereof, to wit, on the 7th day of April, A. D. 1851, at New Orleans, in the State of Louisiana, to wit, in said district, the said bill of exchange, so drawn and endorsed as aforesaid, was presented and shown to the said McKee, Buckley & Co., for payment thereof, and they were then and there requested to pay said sum of money therein specified, according to the tenor and effect of said bill of exchange. But that the said McKee, Bulkley & Co., did not nor would, when the said bill of exchange was so presented and shown to them for payment thereof as aforesaid, or at any time before or afterwards, pay the said sum of money in said bill of exchange specified, or any part thereof, but wholly neglected and refused so to do; nor did they pay the said second of exchange in the said bill mentioned, but therein wholly failed.

And thereupon, afterwards, to wit, on the said 7th day of April, A. D. 1851, at New Orleans aforesaid, to wit, in said district, the said bill of exchange was duly protested for non-payment thereof; of all which several premises, the said defendant afterwards, to wit, on the day and year last aforesaid, had notice, by means whereof the said defendant then and there became liable to pay to said plaintiff the said sum of money in said bill specified, according to its tenor and effect, when thereto requested; and, being so liable, then and there promised the

And afterwards, to wit, on the third day of December, A. D. 1851, the following motion was entered in said cause, to wit:

The plaintiff moves the court for leave to file an amended declaration.

A. BURWELL, *for motion.*

TARPLEY, *Contra.*

And afterwards, to wit, at the May term, A. D. 1852, of said court, the following order was entered in said cause, to wit:

Motion to file amended declaration sustained, and cause continued.

Amended Declaration.

THE UNITED STATES OF AMERICA,
Southern district of Mississippi.

In the Circuit Court to May term, A. D. 1851.

Mathew Watson, a citizen of the State of Tennessee, complains of Colin S. Tarpley, a citizen of the State of Mississippi, in the southern district thereof, who was summoned, &c., of a plea of trespass on the case on promises, for that, whereas the said defendant, heretofore, to wit, on the fourth day of April, A. D. 1850, at Jackson, Mississippi, to wit, in said district, by the name and signature of C. S. Tarpley, made his certain bill of exchange in writing of that date, and then and directed said bill to certain persons, under the style and addition of "Messrs. McKee, Bulkley & Co., New Orleans, La.," meaning thereby the mercantile firm of McKee, Bulkley & Company, in New Orleans, in the State of Louisiana; by which said bill, he the said defendant then and there requested the said McKee, Bulkley & Co., twelve months after date thereof, to pay to the order of James Bankhead, agent, the sum of twenty-three hundred and twenty-seven $\frac{49}{100}$ dollars for value received, and then and there delivered the said bill of exchange to said James Bankhead, and the said James Bankhead, by the name of "James Bankhead, ag't," then and there endorsed the said bill of exchange, and delivered the same so endorsed to the said plaintiff, and thereby then and there ordered and appointed the said sum of money to be paid to said plaintiff; and the said plaintiff avers, that afterwards, to wit, on the 27th day of April, A. D. 1850, at New Orleans, Louisiana, to wit, at the district aforesaid, the said bill of exchange was presented and shown to the said McKee, Bulkley & Co., the drawers for acceptance thereof, and they were then and there required to accept the same, but that the said McKee, Bulkley & Co., did not nor would, at the said time when the said bill of exchange was so presented and shown to them for their acceptance thereof as aforesaid, or at any time afterwards, accept the same, or pay the said sum of money therein specified or any part thereof, but wholly neglected and refused so to do; thereupon the said bill of exchange, afterwards, to wit, on the day and year last aforesaid, at New Orleans, Louisiana aforesaid, to wit, at the district aforesaid, was duly protested for non-acceptance thereof; of all which said several premises the said defendant afterwards, to wit,

on the day and year last aforesaid, at, to wit, the district aforesaid, had notice, by means whereof the said defendant became liable to pay to the said plaintiff the said sum of money in the said bill of exchange specified when thereto requested, and being so liable, the said defendant, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at, to wit, the district aforesaid, undertook, and then and there promised the said plaintiff to pay to him the said sum of money in the said bill specified when thereto afterwards requested.

And for that, whereas, also, the said defendant, by the name of C. S. Tarpley, heretofore, to wit, on the 4th day of April, A. D. 1850, at Jackson, Mississippi, to wit, in said district, made his certain bill of exchange in writing, having date the day and year aforesaid, and directed the same to certain persons in New Orleans, in the State of Louisiana, (by the name and description of "Messrs. McKee, Bulkley & Co., New Orleans, La.,") by which said bill of exchange said defendant then and there requested said McKee, Bulkley & Co., twelve months after date of that first exchange, second of same tenor and date unpaid, to pay to the order of James Bankhead, agent, twenty-three hundred and twenty-seven $\frac{49}{100}$ dollars, value received; and then and there delivered said bill of exchange to said James Bankhead, who then and there, by the name of "James Bankhead, ag't," endorsed the said bill of exchange and delivered the same to said plaintiff, and thereby then and there ordered and directed the said sum of money to be paid to said plaintiff; of all which the said defendant then and there had notice.

And the said plaintiff in fact says, that afterwards, when the said bill of exchange became due and payable, according to the tenor and effect thereof, to wit, on the 7th day of April, A. D. 1851, at New Orleans, in the State of Louisiana, to wit, in said district, the said bill of exchange, so drawn and endorsed as aforesaid, was presented and shown to the said McKee, Buckley & Co., for payment thereof, and they were then and there requested to pay said sum of money therein specified, according to the tenor and effect of said bill of exchange. But that the said McKee, Bulkley & Co., did not nor would, when the said bill of exchange was so presented and shown to them for payment thereof as aforesaid, or at any time before or afterwards, pay the said sum of money in said bill of exchange specified, or any part thereof, but wholly neglected and refused so to do; nor did they pay the said second of exchange in the said bill mentioned, but therein wholly failed.

And thereupon, afterwards, to wit, on the said 7th day of April, A. D. 1851, at New Orleans aforesaid, to wit, in said district, the said bill of exchange was duly protested for non-payment thereof; of all which several premises, the said defendant afterwards, to wit, on the day and year last aforesaid, had notice, by means whereof the said defendant then and there became liable to pay to said plaintiff the said sum of money in said bill specified, according to its tenor and effect, when thereto requested; and, being so liable, then and there promised the

said plaintiff to pay to him the said sum of money in said bill specified, when thereto requested.

Yet the said defendant, though often requested, hath not as yet the said several sums of money, or any of them, or any part thereof, to the said plaintiff, but the same to him to pay hath hitherto refused, and still doth refuse, to the damage of the said plaintiff six thousand dollars; and he therefore sues, &c.

A. BURWELL, *for Pl'ff.*

Plea.

And now the said defendant, in proper person, comes and defends the wrong and injury, when, &c., and for plea saith, that the said plaintiff, to have and maintain his aforesaid action hereof against him, ought not, because he saith that he did not undertake and promise in manner and form as the plaintiff in declaring hereof against him hath alleged; and of this he puts himself upon the country.

CLIFTON & TARPLEY, *P. P.*

And the plaintiff doth the like.

BURWELL, *for Pl'ff.*

And afterwards, to wit, at the said November term of the court aforesaid, to wit, on the 11th day of January, in the year of our Lord one thousand eight hundred and fifty-five, until which time this cause was legally continued, came the parties aforesaid by their attorneys aforesaid, and a jury being called, came, to wit, R. M. Hobson, Samuel Lemly, Joseph Cox, B. W. Jones, G. N. Langford, George Rawls, Robert Morrah, Wm. Lane, Wm. Allen, Wilson Benson, E. G. Lombard, J. B. Catlett, who, being empannelled, tried, and sworn the truth to speak concerning the matters within contained, upon their oath do say, that they find for the defendant on the issue joined.

Bil of Exceptions.

Be it remembered, that, on the trial of this cause, before the Hon. Samuel J. Gholson, judge, and a jury, the plaintiff, in support of his action, read in evidence to the jury the bill of exchange and endorsement thereon of the said defendant, in the words and figures following, to wit:

$2,327 $\frac{49}{100}$. JACKSON, MISSISSIPPI, *4th April*, 1850.

Twelve months after date of this first of exchange, second of same tenor and date unpaid, pay to the order of James Bankhead, agent, twenty-three hundred and twenty seven $\frac{49}{100}$ dollars, value received, and charge to acc't of *your*

Your ob't serv't,

C. S. TARPLEY.

To Messrs. McKEE, BULKLEY & Co.,
New Orleans, La.

Endorsed: Pay Mathew Watson.

JAMES BANKHEAD, *Ag't.*

Protested for non-acceptance. New Orleans, April 27, 1850.

OLIVER H. PERRY, *Not. Pub.*

And the following protest, to wit:

UNITED STATES OF AMERICA,
State of Louisiana.

By this public instrument of protest, Be it known, that on this seventh day of April, in the year one thousand eight hundred and fifty-one, at the request of the Mechanics' and Traders' Bank, New Orleans, holder of the original draft, whereof a true copy is on the reverse hereof written:

I, Hilary Breton Cenas, a notary public, in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly *commission* and sworn, by my deputy, A. Commandeur, presented said draft to Mr. Bulkley, one of the members of the firm of McKee, Bulkley & Co., the drawees, at their office, and demanded payment thereof, and was answered that the same could not be paid. Whereupon, I, the said notary, at the request aforesaid, did protest, and by these do publicly and solemnly protest, as well against the drawer or maker of the said draft, as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges and interests, suffered or to be suffered, for want of payment of the said draft.

Thus done and protested, in the presence of—

JOHN SHANKS and
JAMES HEPBURN,
Witnesses.

In testimony whereof, I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written. [L. S.]

H. B. CENAS, *Notary Public.*

Copy of Bill of Exchange.

$2,327 $\frac{49}{100}$. JACKSON, MISSISSIPPI, *4th April*, 1850.

Twelve months after date of this first of exchange, second of same tenor and date unpaid, pay to the order of James Bankhead, agent, twenty-three hundred and twenty-seven $\frac{49}{100}$ dollars, value received, and charge to acc't of

Your ob't serv't,

C. S. TARPLEY.

To Messrs. MCKEE, BULKLEY & CO.,
New Orleans, La.

Endorsed: James Bankhead. M. WATSON, *Pt.*

Protested for non-acceptance. New Orleans, April 27, 1850.

OLIVER H. PERRY, *Not. Pub.*

I, Hilary Breton Cenas, a notary public, in and for the parish of Orleans and State of Louisiana, residing in the city of New Orleans, duly commissioned and sworn, do certify, that on the day of the date of this protest, I notified the drawer and all the endorsers of the draft hereunto attached, of the within protest of the same for non-payment, by notices in writing and print, by me signed, of the same date of the said protest, and which I enclose in the one of M. Watson, pt., directed to him at Nashville, Tennessee.

And on the same day I deposited said notices in the post office in this city, in time to go by the first mail thereafter.

In testimony whereof I grant these presents under my signature, and the impress of my seal of office, at the city of [L. S.] New Orleans aforesaid, on this 7th day of April, A. D. 1851.

H. B. CENAS,
Notary Public.

The plaintiff then read in evidence the deposition of H. B. Cenas, in the words and figures, to wit:

UNITED STATES OF AMERICA,
Eastern district of Louisiana, City of New Orleans, ss:

Be it remembered, that on this eleventh day of November, in the year of our Lord one thousand eight hundred and fifty-two, before me, Francis N. Harralson, a commissioner duly appointed on the by the circuit court of the United States in and for the eastern district of Louisiana, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress, entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817; and the act, entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, personally appeared Hilary B. Cenas, of New Orleans, a person of sound mind and lawful age, a witness for the plaintiff in civil suit now pending in the circuit court of the United States in and for the southern district of Mississippi, wherein Mathew Watson is plaintiff and Colin S. Tarpley is defendant, and the said Hilary B. Cenas, being by me first carefully examined and cautioned and sworn to testify the whole truth, and nothing but the truth, did depose and say—

That he resides in the city of New Orleans, and is a notary public, duly commissioned and sworn, for the parish of Orleans, State of Louisiana; that on the seventh day of April, A. D. 1851, in his capacity aforesaid, at the request of the Mechanics' and Traders' Bank of New Orleans, his lawful deputy, Augustus Commandeur, at his request, presented a draft for the sum of $2,327 49, drawn at Jackson, Miss., on the 4th of April, 1850, to the order of James Bankhead,

agent, upon Messrs. McKee, Bulkley & Co., by the defendant, payable twelve months after date, for payment, and said drawers (McKee, Bulkley & Co.) answered that the same could not be paid; that on the same day of said protest, he notified the parties to said draft of the protest thereof, as follows, to wit: by letters written and addressed by deponent, and deposited in the post office at New Orleans on the same day, directed to them, respectively, to the drawer at Jackson, Miss.; that for the first endorser enclosed in the one of M. Watson, pt., directed to him, at Nashville, Tennessee; all of which will fully appear by the annexed certified copy of said protest and certificate; and further this deponent sayeth not.

H. B. CENAS.

Sworn to and subscribed before me at New Orleans, Nov. 11th, 1852.
F. N. HARRALSON, [L. S.]
U. S. Comm'r for Louisiana.

UNITED STATES OF AMERICA,
Fifth Circuit and Eastern District of Louisiana,
City of New Orleans, ss:

I, Francis N. Harralson, a commissioner duly appointed on the by the circuit court of the United for the fifth circuit and eastern district of Louisiana, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812; and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify, that the reason for taking the foregoing deposition is, that the witness lives in New Orleans, State of Louisiana, more than one hundred miles from Jackson, in the State of Mississippi, the place of trial of the cause for and in which said deposition was taken and is necessary.

I further certify, that no notices were by me made out and served on the defendant or adverse party, his agent or attorney, to be present at the taking of the deposition, and to put interrogatories, if he or they may think fit, and that notice of the time and place of taking the said deposition were by me made out and served on said defendant or adverse party, because neither the said adverse party, nor any attorney or agent of said adverse party was, at the time of taking said deposition, within (100) one hundred miles of the said city of New Orleans, the place of taking the said deposition, to the knowledge of the undersigned.

I further certify, that on this eleventh day of November, A. D. 1852, I was attended by the witness, who being of sound mind and lawful age, and the witness having been by me carefully examined

and cautioned, and sworn to testify the whole truth, and the deposition having been by me reduced to writing, in the presence of the witness, and after carefully reading the same to the witness, he subscribed the same in my presence.

I have retained the said deposition in my possession for the purpose of sealing up, directing the same with my own hand, and forwarding to the court for which the same was taken.

I further certify, that I am not of counsel or attorney to either of the parties to the suit in said deposition and caption named, or in any way interested in the event of the said civil cause named in the caption.

In testimony whereof I have hereunto set my hand and seal.

F. N. HARRALSON, [SEAL.]
United States commissioner, circuit and district court of the United States for the eastern district of Louisiana.

Copy of Protest referred to in Deposition.

UNITED STATES OF AMERICA,
State of Louisiana.

By this public instrument of protest, be it known, that on this seventh day of April, in the year one thousand eight hundred and fifty-one, at the request of the Mechanics' and Traders' Bank, New Orleans, holder of the original draft whereof a true copy is on the reverse hereof written, I, Hilary Breton Cenas, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, by my deputy, A. Commandeur, presented said draft to Mr. Bulkley, one of the members of the firm of McKee, Bulkley & Co., the drawers, at their office, and demanded payment thereof, and was answered that the same could not be paid.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said draft, as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interests, suffered or to be suffered for want of payment of the said draft. Thus done and protested in the presence of John Shanks and James Hepburn, witnesses.

In testimony whereof, I grant these presents under my signature and the impress of my seal of office, on the day and year first above written.

H. B. CENAS, *Notary Public.*

Original signed—
JOHN SHANKS,
JAMES HEPBURN.

Filed Nov. 11th, 1852.

F. N. HARRALSON,
U. S. Comm'r for Louis'a.

$2,327 $\frac{44}{100}$. JACKSON, MISSISSIPPI, *4th April*, 1850.

Twelve months after date of this first of exchange, second of said tenor and date unpaid, pay to the order of James Bankhead, agent, twenty-three hundred and twenty-seven $\frac{44}{100}$ dollars. Value received, and charge to acc. of

Your ob't svt.,

C. S. TARPLEY.

To Messrs. McKEE, BULKLEY & Co.,
New Orleans, La.

Endorsed: JAMES BANKHEAD, ag't,
M. WATSON, Pt.

Protested for non-acceptance. New Orleans, April 27, 1850.
OLIVER H. PERRY, *Not. Pub.*

I, the undersigned notary, do hereby certify that the parties to the draft, whereof a true copy is embodied in the accompanying act of protest, have been duly notified of the protest thereof, by letters to them by me written and addressed, dated on the day of said protest, and served on them this day respectively, as follows (to wit): By depositing those for the drawer and endorsers in the post office in this city on the same day as this protest, directed to them respectively, as follows, to wit: that for the drawer at Jackson, Miss.; that for the first endorser enclosed in the one for M. Watson, Pt., directed to him at Nashville, Tenn.

In faith whereof, I hereunto sign my name, together with John Shanks and James Hepburn, witnesses, at New Orleans, this 7th day of April, A. D. 1851.

H. B. CENAS, *Not. Pub.*

Original signed—
JOHN SHANKS,
JAMES HEPBURN.

[L. S.] I certify the foregoing to be a true copy of the original on file and of record in my office, in faith whereof I grant these presents, under my signature and seal of office, this 10th day of November, A. D. 1852.

H. B. CENAS, *Not. Pub.*

The plaintiff then read the depositions of H. B. Cenas, A. Commandeur, and C. F. Barry, in the words and figures following:

UNITED STATES OF AMERICA,
Eastern district of Louisiana, City of New Orleans, ss:

Be it remembered, that on this the eighth day of June, in the year of our Lord one thousand eight hundred and fifty-three, before me, Marcellus A. Foute, a commissioner duly appointed, on the 8th day of

November, 1852, by the circuit court of the United States in and for the eastern district of Louisiana, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812; and the act of Congress entitled "An act in addition to an act entitled an act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March 1st, 1817; and the acte ntitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, personally appeared H. B. Cenas, A. Commandeur, and Chas. F. Barry, persons of sound mind and lawful age, witnesses for the plaintiffs in civil suit now depending in the circuit court of the United States in and for the southern district of Mississippi, wherein Mathew Watson is plaintiff, and Colin S. Tarpley is defendant; and the said witnesses, Cenas, Commandeur, and Barry, being by me first carefully examined and cautioned, and sworn to testify the whole truth, and nothing but the truth, did depose and say, as follows, in pages numbered from one to five inclusive.

And first came witness H. B. Cenas, who being duly sworn, deposes:

I am a notary public in and for the city of New Orleans, parish of Orleans, State of Louisiana, duly appointed and qualified; I have been a notary public since the year 1834.

I was acquainted, by report, with McKee, Bulkley & Co., of New Orleans. On the seventh day of April, 1851, in my official capacity aforesaid, I duly protested for non-payment a certain draft drawn by C. S. Tarpley on the said McKee, Bulkley & Co., to the order of James Bankhead, agent, for the sum of twenty-three hundred and twenty-seven $\frac{49}{100}$ dollars, dated Jackson, Mississippi, 4th April, 1850, and payable twelve months after date; said draft having previously protested for non-acceptance, on 27th April, 1850, by Oliver H. Perry, not. pub., as appeared from its face. A true and correct copy of said draft is embodied in my certified act of protest, hereto annexed and made part of my deposition. I presented said draft by my lawful, sworn deputy, A. Commandeur, to Mr. Bulkley, one of the members of the firm of McKee, Bulkley & Co., the drawers, at their office, and demanded payment thereof, on the 7th day of April, 1851, and was answered that the same could not be paid, whereupon I protested said draft as aforesaid.

I gave due notice of the protest of said draft on the day of said protest, (7th April, 1851,) to the drawer and endorsers thereof, by letters to them, by me written and addressed, dated on the day of said protest and served on them the same day respectively, as follows, to wit: by depositing the notice for the drawer in the post office in the city of New Orleans, directed to him (C. S. Tarpley) at Jackson, Mississ., and that for the first endorser enclosed in the one for M. Watson, P't, directed to him at Nashville, Tenn. These letters of notice to the drawer and endorsers were deposited by me, through my lawful, sworn, deputy, Charles F. Barry, in the post office at New Orleans, on the seventh

day of April, 1851, the same day of the protest of said draft, in time to go by the mail of that day for Jackson, Mississippi, and Nashville, Tenn. I refer to my certified copy of act of protest, as embodying my official doings in the matter.

H. B. CENAS, *Not. Pub.*

Sworn to and subscribed before me this 8th day of June, A. D. 1853. MARCELLUS A. FOUTE,
U. S. Commr.

Copy of Protest referred to in foregoing Deposition.

UNITED STATES OF AMERICA,
State of Louisiana.

By this public instrument of protest, be it known, that on this seventh day of April, one thousand eight hundred and fifty-one, at the request of the Mechanics' and Traders' Bank, New Orleans, holders of the original draft, whereof a true copy is on the reverse hereof written, I, Hilary Breton Cenas, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn by my deputy, A. Commandeur, presented said draft to Mr. Bulkley, one of the members of the firm of McKee, Bulkley & Co., the drawers, at their office, and demanded payment thereof, and was answered that the same could not be paid; whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said draft, as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interests, suffered, or to be suffered, for want of payment of the said draft. Thus done and protested in the presence of John Shanks and James Hepburn, witnesses.

In testimony whereof I grant these presents, under my signature and the impress of the seal of my office, at the city of New Orleans, on the day and year first above written.

H. B. CENAS, *Notary Public.*

Original signed: JOHN SHANKS,
JAMES HEPBURN.

$2,327$\frac{4}{100}$. JACKSON, MISSISSIPPI, *4th April*, 1850.

Twelve months after date of this first of exchange, second of same tenor and date unpaid, pay to the order of James Bankhead, agent, twenty-three hundred and twenty-seven $\frac{4}{100}$ dollars, value received, and charge to account of Your ob't serv't,

C. S. TARPLEY.

To Messrs. MCKEE, BULKLEY & Co.,
New Orleans, La.

Endorsed: JAMES BANKHEAD, *Ag't.*
M. WATSON, *P't.*

Protested for non-acceptance. New Orleans, April 27th, 1850.
OLIVER H. PERRY, *Not. Pub.*

I, the undersigned notary, do hereby certify, that the parties to the draft whereof a true copy is embodied in the accompanying act of protest, have been duly notified of the protest thereof, by letters to them by me written and addressed, dated on the day of said protest and served on them this day respectively, as follows, to wit: by depositing those for the drawer and endorsers in the post office in this city on the same day as this protest, directed to them respectively, as follows, to wit: that for the drawer at Jackson, Miss.; that for the first endorser, enclosed in the one for M. Watson, P't, directed to him at Nashville, Tenn.

In faith whereof, I hereunto sign my name, together with John Shanks and James Hepburn, witnesses, at New Orleans, this 7th day of April, A. D. 1851.

H. B. CENAS, *Not. Pub.*

Original signed:
JOHN SHANKS,
JAMES HEPBURN.

I certify the foregoing to be true copies of the original protest, draft, and certificate of the manner in which the notices were served, on file and of record in my office. In faith whereof, I grant these presents under my signature and seal of office, on this seventh day of June, A. D. 1853. H. B. CENAS, *Not. Pub.*

And next came witness A. Commandeur, who, being first duly sworn, deposes:

I am the lawful sworn deputy of H. B. Cenas, notary public of New Orleans; I was deputy, as aforesaid, on 7th April, 1851, and for a long time previous to that date. I was acquainted with the late firm of McKee, Bulkley & Co., of New Orleans; I presented the draft, whereof a true copy is embodied in the certified copy of act of protest, annexed to the deposition of H. B. Cenas, which said copy of act of protest I now also make part of this my deposition, to Mr. Bulkley, one of the firm of McKee, Bulkley & Co., at their office in the city of New Orleans, on the 7th day of April, 1851, the day on which said draft became due and payable, and demanded payment thereof, and was answered that the same could not be paid. The drawer and endorsers of said draft were duly notified of the protest thereof. Letters of notice were written and sent to all the parties on the day of protest. The letter of notice to C. S. Tarpley, the drawer, was directed to him at Jackson, Missis., and placed in the post office at New Orleans on the 7th April, 1851, the day of protest of said draft, in time to go by the mail of that day for Jackson, Mississippi. The notices to the endorsers were served, as stated in Mr. Cenas's deposition, and the act of protest.

A. COMMANDEUR.

Sworn to and subscribed before me, this 8th day of June, A. D. 1853. MARCELLUS A. FOUTE,
U. S. Comm'r.

And next came witness Chas. F. Barry, who, being first duly sworn, deposes:

I am a lawful sworn deputy of H. B. Cenas, notary public; I was deputy as aforesaid on the 7th day of April, 1851, and for some time previous thereto.

I know of the protest of a certain draft for non-payment by H. B. Cenas, notary public, on the 7th of April, 1851—said draft being drawn by C. S. Tarpley, on McKee, Bulkley & Co., to the order of James Bankhead, agent, for the sum of twenty-three hundred and twenty-seven $\frac{4}{100}$ dollars, dated Jackson, Mississippi, 4th April, 1850, and payable twelve months after date, a true copy of which is embodied in the certified act of protest annexed to the deposition of H. B. Cenas, and now also referred to and made part of this my deposition.

I duly notified the drawer and endorsers of said draft of the protest thereof on the day of said protest, (7th April, 1851,) by depositing myself the letters of notice in the post office at the city of New Orleans.

These letters of notice were directed as stated in the act of protest: the one to the drawer, C. S. Tarpley, addressed to him at Jackson, Missis., and those to the endorsers, to M. Watson, Pt., Nashville, Tenn. The notices were placed by me in the post office on the date aforesaid, (7th April, 1851,) in time to go by the mail of that day for Jackson, Missis., and Nashville, Tenn.

CHS. FRED. BARRY.

Sworn to and subscribed before me, this 8th day of June, A. D. 1853.

MARCELLUS A. FOUTE, *U. S. Comm'r.*

UNITED STATES OF AMERICA,
Fifth Circuit and Eastern district of Louisiana,
City of New Orleans, ss:

I, Marcellus A. Foute, a commissioner duly appointed on the , by the circuit court of the United States for the fifth circuit and eastern district of Louisiana, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812; and the act of Congress entitled "An act in addition to an act entitled an act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify, that the reason for taking the foregoing depositions is, that the witnesses live in New Orleans, in the State of Louisiana, more than one hundred miles from Jackson, State of Mississippi, the place of trial of the cause for and in which said depositions are taken and to be used.

I further certify, that no notice was made out and served on the defendant or adverse party, agent or attorney, to be present at the taking of the depositions, and to put interrogatories, if he or they may think

fit; and that no notice of the time and place of taking the said depositions was made out and served on said defendant or adverse party, because neither the said adverse party, nor any attorney or agent of said adverse party was, at the time of taking said deposition, within (100) one hundred miles of the said city of New Orleans, the place of taking the said depositions, to the knowledge of the undersigned.

I further certify, that on this the eighth day of June, A. D. 1853, I was attended by the witnesses, who were of sound mind and lawful age, and the witnesses were by me carefully examined, and cautioned and sworn to testify the whole truth, and the depositions were by me reduced to writing in the presence of the witnesses, and, after carefully reading the same to the witnesses, they subscribed the same in my presence.

I have retained the said depositions in my possession for the purpose of sealing up, directing the same with my own hand, and forwarding to the court for which the same were taken.

I further certify that I am not of counsel or attorney to either of the parties to the said suit, in said deposition and caption named, or in any way interested in the event of the said civil cause named in the caption.

In testimony whereof, I have hereunto set my hand and seal.

MARCELLUS A. FOUTE,
U. S. Commissioner.

Circuit and District Court United States for the Eastern District of Louisiana.

CIRCUIT COURT OF THE UNITED STATES,
Fifth Circuit and Eastern district of Louisiana.

NEW ORLEANS,
Monday, 8th day of November, 1852.

Court met pursuant to adjournment.

Present, the honorable Theo. H. McCaleb, district judge.

By virtue of the powers vested in this court by the several acts of Congress in such cases made and provided, and the court being of opinion that the appointment of an additional commissioner of the United States for the eastern district of Louisiana is expedient, it is ordered that M. A. Foute, esqr. be, and he is hereby appointed a commissioner of the United States in and for the district aforesaid, clothed with full power and authority to take affidavits, recognisance of bail in criminal cases, and to take the testimony of witnesses in cases pending before the courts of the United States, and to do all such other acts and things as by the several acts of Congress in such cases made and provided, commissioners appointed as aforesaid are empowered to do, and that a copy of this order issue to the said M. A. Foute, as his commission.

CLERK'S OFFICE.

I certify the foregoing to be a true copy from the original of record in this office.

Witness my hand and seal of said court, at the city of New Orleans, this 20th day of June, 1853.

J. W. GURLEY, *Clerk*.

The plaintiff then read in evidence the following protest for non-acceptance:

UNITED STATES OF AMERICA,
State of Louisiana.

By this public instrument of protest, be it known that on this twenty-seventh day of April, in the year one thousand eight hundred and fifty, at the request of Messrs. McGregor, Brown, holders of the original draft, whereof a true copy is on the reverse hereof written, I, Oliver Hazard Perry, a notary public, in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn by my deputy, James W. Duplessis, presented the said draft to Mr. Bulkley, of the firm of McKee, Bulkley & Co., the drawees, at their office in this city, and having demanded acceptance thereof, was by him answered that the same could not be accepted.

Whereupon, I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest as well against the drawer or maker of the said draft as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges and interest, suffered or to be suffered, for want of acceptance of the said draft.

Thus done and protested in the presence of C. La Bédoyere Kernon and James W. Duplessis, witnesses.

In testimony whereof, I grant these presents under my signa-
[L. S.] ture and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

OLIVER H. PERRY, *Not. Pub.*

$2,327 $\frac{40}{100}$. JACKSON, MISSISSIPPI,
4th April, 1850.

Twelve months after this first of exchange, second of same tenor and date unpaid, pay to the order of James Bankhead, agent, twenty-three hundred and twenty-seven $\frac{40}{100}$ dollars, value received, and charge to ac. of

Your ob't serv't,

C. S. TARPLEY.

To Messrs. MCKEE, BULKLEY & CO., *New Orleans, La.*

Endorsed: JAMES BANKHEAD, *Agent*.

And the deposition of James W. Duplessis, in the words and figures following:

STATE OF LOUISIANA,
Parish of Orleans, city of New Orleans.

I, Richard Brenan, a notary public, duly commissioned and sworn, in and for the parish of Orleans and State of Louisiana, certify that on the 22nd day of April last, 1852, Oliver Hazard Perry, then a notary public for this parish about resigning his office, presented to and requested me, notary, to receive on deposit, in my notarial records for reference, three certain documents or instruments in writing, one of which is in the following words and figures:

I, James W. Duplessis, of the city of New Orleans, and lawful age, do solemnly swear that I will support the laws and constitution of the United States, and of the State of Louisiana, and I do further solemnly swear that I will well and truly execute and perform all the duties incumbent on me as deputy of Oliver H. Perry, a notary public in and for the said city and parish of New Orleans, State of Louisiana, in protesting bills of exchange, drafts and promissory notes, and in giving notices of such protests pursuant to the provision of an act entitled "An act relative to the protest of bills of exchange," passed by the legislature of this State, approved on the 14th March, 1844.

"And I do further swear, since the adoption of the present constitution, I, being a citizen of this State, have not fought a duel with deadly weapons within this State, nor out of it, with a citizen of this State, nor have I accepted or sent a challenge to fight a duel with deadly weapons with a citizen of this State, nor have *nor have* I acted as second in carrying a challenge, or aided, advised or assisted any person thus offending, so help me God."

(Signed) JAS. W. DUPLESSIS.

Sworn to and subscribed before me this 23rd day of March, A. D. 1850.

(Signed) A. M. BUCHANAN, *Judge*.

[L. S.] In faith whereof, I have hereunto signed my name and affixed the impress of my official seal at New Orleans, this fifteenth October, 1852.

R. BRENAN, *Not. Pub.*

"An Act relative to protests of bills of exchange.

"Be it enacted by the senate and house of representatives of the State of Louisiana, in general assembly convened, That it shall be lawful for each and every notary public in New Orleans, to appoint one or more deputies to assist him in the making of protests and delivery of notices of protests, of bills of exchange and promissory notes: Provided, That each notary shall be personally responsible for the acts of each deputy employed by him; and provided, that each deputy shall

take an oath faithfully to perform his duties as such, before the judge of the parish in which he may be appointed; and provided, the certificate of notice or protest shall state by whom made or served.

(Signed) C. DERBIGNY,
Speaker of the House of Representatives.

(Signed) A. MONTON,
Governor of the State of Louisiana.

(Signed) FELIX GARCIA,
President of the Senate.

Approved, March 14, 1844.

I, the undersigned, a notary public in New Orleans, State of Louisiana, duly commissioned and sworn, do hereby certify that the foregoing is a true copy of the act of the legislature of Louisiana referred to in the annexed depositions.

In testimony whereof, I grant these presents under my hand
[L. S.] and notarial seal, at New Orleans, this 16th day of October, A. D. 1852.

C. LA BEDOYERE KENNION, *Not. Pub.*

MATHEW WATSON
vs.
COLLIN S. TARPLEY.

CIRCUIT COURT UNITED STATES,
Southern District, Mississippi.

Deposition of James W. Duplessis, a resident of the city of New Orleans, in the parish of Orleans, State of Louisiana, taken by and before me, Charles La Bedoyere Kernion, a notary public in and for the said parish of Orleans, State of Louisiana, duly commissioned and sworn, and dwelling and practising in the said city of New Orleans, on this sixteenth day of the month of October, in the year of our Lord one thousand eight hundred and fifty-two, in the said city of New Orleans, and in my office, No. 21 Commercial Place, between the hours of nine o'clock a. m., and eleven o'clock a. m., at the request of Messrs. McGregor & Alloway, merchants in this said city of New Orleans; and pursuant to the annexed telegraphic dispatch, the same to be read as evidence in behalf of the plaintiff upon the trial of the case now pending in the circuit court United States, southern district Mississippi, wherein Mathew Watson is plaintiff and Collin S. Tarpley is defendant, to wit:

The said James W. Duplessis, of lawful age, being first by me, notary, duly cautioned and solemnly sworn, did declare and depose as follows, viz:

My name is James Withers Duplessis. I am a resident of the city of New Orleans, in the parish of Orlearns, State of Louisiana.

On the 27th day of April, 1850, I was a clerk to and the deputy of Mr. Oliver Hazard Perry, then a notary public in the said city of New Orleans, lately resigned, and now absent.

I took my oath as deputy of said Mr. Oliver H. Perry, notary, on the 23d day of March, 1850, before the honorable A. M. Buchanan, judge of the fifth district court of said city of New Orleans, a certified copy of which oath is hereto annexed. I was appointed Mr. O. H. Perry's deputy under the provisions of an act of the legislature of the State of Louisiana, approved on the 14th day of March, 1844; a certified copy of which act is also hereto annexed. In my said capacity of deputy, &c., I am aware that on the said 27th day of April, 1850, a draft, whereof the following is a true copy, taken by me from said Mr. Perry's notarial records, (now in the possession of the undersigned notary, his successor,) viz:

$2,327 $\frac{42}{100}$. JACKSON, MISSISSIPPI, *4th April*, 1850.

Twelve months after date of this first of exchange, second of same tenor and date unpaid, pay to the order of James Bankhead, agent, twenty-three hundred and twenty-seven $\frac{42}{100}$ dollars, value received, and charge to acc. of Your ob't svt.,

C. S. TARPLEY.

To Messrs. McKEE, BULKLEY & Co.,
New Orleans, La.

"Endorsed in pencil:" James Bankhead, ag't, was placed by the commercial firm of MacGregor, Brown & Co., of said city of New Orleans, (of whom the said MacGregor & Alloway are now the successors in business,) in the hands of the said Oliver H. Perry, notary, for the purpose of demanding of the drawees acceptance thereof, with instructions, in case of refusal, to protest the same for non-acceptance; on the said 27th day April, 1850, at the instance aforesaid of the said Messrs. MacGregor, Brown & Co., and as the deputy of the said Oliver H. Perry, notary, I presented the draft aforesaid to Mr. Bulkley, of the firm of McKee, Bulkley & Co., the drawees, and at the latter's counting-room, in this city of New Orleans, and demanded of him acceptance thereof; and having been by him answered that the said draft could not be accepted, the same was, at the request of the said MacGregor, Brown & Co., and for non-acceptance, protested by the said Oliver H. Perry, notary, on the said 27th day of April, 1850. I signed said protest as deputy, &c., as the whole is fully set forth in the said protest, whereof the following is a correct copy, taken by me from said O. H. Perry's notarial records, viz:

UNITED STATES OF AMERICA,
State of Louisiana, ss:

By this public instrument of protest, be it known, on this twenty-seventh day of April, in the year one thousand eight hundred and fifty, at the request of Mess. MacGregor, Brown & Co., holders of the

original draft, whereof a true copy is on the reverse hereof written, I, Oliver Hazard Perry, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, by my deputy, James W. Duplessis, presented the said draft to Mr. Bulkley, of the firm of McKee, Bulkley & Co., the drawees, at their office, in this city, and having demanded acceptance thereof, was by him answered that the same could not be accepted; whereupon, I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said draft as against all others whom it doth or may concern, for all exchange or re-exchange, damages, costs, charges, and interest suffered, or to be suffered, for want of acceptance of the said draft.

Thus done and protested in the presence of C. La Bedoyere Kernion and James W. Duplessis, witnesses.

In testimony whereof, I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

OLIVER H. PERRY,
Not. Pub.

La Bedoyere Kernion,
Jas. W. Duplessis.

On the day of the said protest for non-acceptance, to wit, the 27th of April, 1850, a notice written, addressed and directed by said Oliver H. Perry, notary, to said C. S. Tarpley, drawer of the said draft, at Jackson, Miss., notifying him of the said protest, was by me, as deputy as aforesaid, put in the post office in said city of New Orleans, and a like notice for, and addressed to the said James Bankhead, agent, endorser on the said draft, was by me, as deputy aforesaid, left on the same day at the counting-house of said Mess. MacGregor, Brown & Co., with their bookkeeper, they, said MacGregor, Brown & Co. being desirous to take charge of, and forward the same: as the whole will more fully appear by the following true copy of the return of service of such notices taken by me from said Perry's notarial records, viz:

I, the undersigned notary, do hereby certify, that the parties to the draft, whereof a true copy is above written, have been duly notified of the protest thereof by letters to them, by me written and addressed, dated on the day of the said protest, and served on them respectively in the manner following, viz: A notice addressed to C. S. Tarpley, directed to him at Jackson, Miss., was by my deputy, James W. Duplessis, deposited in the post office in this city on this day of protest; and a notice addressed to James Bankhead was, by my said deputy, delivered to the bookkeeper of the holders at their office on the day below written, they being desirous to take charge of the same.

In faith whereof I have hereunto signed my name, together with C. La Bedoyere Kinion and James W. Duplessis, witnesses, at New

Orleans, this twenty-seventh day of April, one thousand eight hundred and fifty.

OLIVER H. PERRY, *Not. Pub.*

LA BEDOYERE KINION,
JAS. W. DUPLESSIS.

I am aware that Mr. Perry no longer resides in New Orleans; heard that he had gone to China; I remained a clerk to and deputy of said Perry, notary, until August, 1850, or thereabouts. Mr. Perry resigned his notarial commission in April, 1852. Mr. Kernion is now his successor in office by appointment made in April, 1852, by the governor of Louisiana; and further deponent knows not. In faith whereof, I have hereto signed my name and affixed my seal.

JAS. W. DUPLESSIS. [L. S.]

UNITED STATES OF AMERICA, STATE OF LOUISIANA,
Parish of Orleans, city of New Orleans.

I, the undersigned Charles La Bedoyere Kenion, a notary public, in and for the parish of Orleans, State of Louisiana, duly commissioned and sworn, dwelling and practising in this city of New Orleans, do hereby certify that the above-named James W. Duplessis was by me sworn to testify the truth, and that the foregoing depositions by him subscribed were by me reduced to writing, and were by me taken on the day and at the place stated in caption hereof.

In testimony whereof I grant these presents, under my hand and seal of office, at New Orleans, on the day, month and [L. S.] year first above written, to wit, the sixteenth day of October, A. D. one thousand eight hundred and fifty-two.

C. LE BEDOYERE KERNION,
Not. Pub.

"*Copy of telegraphic despatch referred to in foregoing deposition.*

"Dated NASHVILLE, 14th , 185 .
"Received
"To MACG. & A.:

"Send deposition of notary who protested Tarpley's bill for non-acceptance on McKee, Bulkley & Co. in April, 1850, to the clerk, at Jackson. Style of suit: Mathew Watson against Collier S. Tarpley, in circuit court U. S., southern district Mississippi.

"JAMES BANKHEAD."

The plaintiff then proved that the defendant, at the dates of both said protests, resided at Jackson, Mississippi, which was his post office at each of said periods of time.

This was all the evidence offered on the part of the plaintiffs. The defendant then offered to read to the jury the certificate, in the words and figures following:

I, Hilary Breton Cenas, a notary public in and for the parish of Orleans, and State of Louisiana, residing in the city of New Orleans, duly commissioned and sworn, do certify, that on the day of the date of this protest I notified the drawer and all the endorsers of the draft hereunto attached, of the within protest of the same for non-payment, by notices in writing and print, by me signed, of the same date of the said protest, and in which I enclosed in the one of M. Watson, pt., directed to him at Nashville, Tennessee, and on the same day I deposited said notices in the post office in this city in time to go by the first mail thereafter.

In testimony whereof I grant these presents, under my signature and the impress of my seal of office, at the city of New [L. S.] Orleans aforesaid, on this 7th day of April, A. D. 1851.

H. B. CENAS,
Notary Public.

Which certificate is on the same sheet of paper and immediately following the copy of the bill of exchange therein, which was offered and read as the protest for non-payment by the plaintiff, without any proof of the handwriting of H. B. Cenas, whose name purports to be signed thereto; to the reading of which to the jury in evidence, the plaintiff then and there objected; but the court overruled the objection, and permitted the same to be read in evidence to the jury, to which the plaintiff then and there objected.

This being all the evidence on both sides, the court instructed the jury:

That the plaintiff was not entitled to recover on the count in the declaration, on the protest of the bill for non-acceptance, unless due and regular notice was proved of the protest of the bill for non-payment, though the jury might be satisfied, from the proof, that the bill had been regularly protested for non-acceptance, and due notice thereof given to the defendant; that to entitle the plaintiff to recover, notwithstanding the proof of protest for non-acceptance and due notice thereof, the plaintiff must prove protest for non-payment and due notice thereof to the defendant, and that the jury were the judges of the testimony, and could give to the witnesses such credit as they thought them entitled to, looking to all the circumstances of the case.

To the giving of which instructions the plaintiff then and there excepted, and prayed this to be signed and sealed and made part of the record as his bill of exceptions; this is done accordingly before jury retired.

Given under my hand and seal, this 11th day of January, 1855.

S. J. GHOLSON. [SEAL.]

Therefore it is considered by the court, that the said plaintiff, Mathew Watson, take nothing by his said bill, but for his false clamor be in mercy, &c.; and that the said defendant, Colin S. Tarpley, go thereof hence, without day, and recover of and against the said plaintiff the sum of dollars cents for his costs and charges by him about his defence in this behalf expended.

Copy of writ of error bond.

UNITED STATES OF AMERICA,
Southern district of Mississippi, sct.

Know all men by these presents, that we, Mathew Watson and Armistead Burwell, are held and firmly bound unto Colin S. Tarpley in the just and full sum of three hundred dollars lawful money of the United States, to be paid to the said Colin S. Tarpley, his lawful attorney, executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents; sealed with our seals, and dated the 17th day of January, A. D. one thousand eight hundred and fifty-five.

The condition of this obligation is such, that whereas, at an adjourned term of the circuit court of the United States for the southern district of Mississippi, commenced and held at the city of Jackson on the second Monday of January, A. D. 1855, judgment was rendered by said court in favor of the said Colin S. Tarpley against the said Mathew Watson for the costs of suit, and the said Mathew Watson has sued out a writ of error from the Supreme Court of the United States to reverse said judgment.

Now, if the said Mathew Watson shall prosecute his said writ of error to effect, and shall well and truly pay and satisfy the amount of said judgment, and all damages, interest, and costs, as the said Supreme Court of the United States shall adjudge in the premises, if he the said Mathew Watson shall fail to make his plea good, then and in this case this obligation to be void, otherwise to remain in full force and virtue.

MATHEW WATSON, [SEAL.]
By his atto., A. Burwell.
A. BURWELL, [SEAL.]

Sealed and delivered in presence of—
W. H. BROWN.

I approve the within bond and security, Jan'y 17th, 1855.
S. J. GHOLSON,
Judge U. S. D. C. for Miss.

UNITED STATES OF AMERICA,
Southern district of Mississippi, circuit court U. S.

I, William H. Brown, clerk of said circuit court, do hereby certify that the foregoing 33 pages contain a full, true, and complete trans-

cript of the record of the judgment in the case of Mathew Watson vs. Colin S. Tarpley, as the same now remains of record in my office, as also a true and correct copy of the writ of error bond filed in said cause.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Jackson, this 1st day of May, A. D. 1855, and of the Independence of the United States the 79th.

[L. S.]

W. H. BROWN, *Clerk*.

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the judges of the Circuit Court of the United States for the southern district of Mississippi, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between Matthew Watson, plaintiff, and Colin S. Tarpley, defendant, a manifest error hath happened, to the great damage of the said Matthew Watson, as by his complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in his behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the Monday of next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and fifty-four, and of the independence of the United States the 79th.

[L. S.]

Issued the 1st day of May, A. D. 1855.

W. H. BROWN,
Cl'k circuit court U. S. so. dist. Miss'i.

Citation.

UNITED STATES OF AMERICA, *ss:*

To Colin S. Tarpley, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington, on the first Monday in December next, pursuant to a writ of error filed in the